party bringing suit to delay his action, and thus increase in many instances the amount of his damages. The rule continues, however, to be followed in a few states. *Sturgis v. Keith,* 57 Ill. 451; *Parsons v. Martin,* 11 Gray (Mass.) 111; *Neiler v. Kelley,* 69 Pa. St. 403, 408. In the latter state it has been limited to those cases where a relation of trust exists between the parties, and, where a transfer of stock was permitted by a bank on a forged power of attorney, there being no breach of trust, the value at the time of the conversion was accepted as a criterion. *In re Jamison & Co.'s Est.,* 163 Pa. St. 143; *Ins Co. v. Phila., etc., R. R. Co.,* 153 Pa. St. 160. In some states the English rule has been adopted by statute, but the courts have required the complainant to proceed without unreasonable delay, and where this was not done, have estimated upon the basis of the value at the time of conversion. *Fargo First Nat. Bk. v. Minn. Elevator Co.,* 8 N. Dak. 430.

The case of *Romaine v. Allen, supra,* opened the eyes of the New York courts to the dangers of the English rule. In that case the trial was a protracted one before a referee, and the stock, which was worth $3,937.50 at the time of conversion, rose to $8,175 during the course of the trial. This was allowed by the referee as damages. When the subject came again before the Court of Appeals in *Baker v. Drake,* 53 N. Y. 211, 217, the decision in *Romaine v. Allen* was reversed, and the now prevailing rule adopted. This was subsequently reaffirmed in *Wright v. Bank of Metropolis,* 110 N. Y. 237, and by the Federal Supreme Court in *Galigher v. Jones,* 129 U. S. 193. The rule in these cases, and as it is more clearly stated by the Connecticut court, is now adopted by the majority of the states. *Citizens' St. Ry. Co. v. Robbins,* 144 Ind. 671; *Dimock v. U. S. Nat. Bk.,* 55 N. J. L. 296; *Ralston v.Bk.,* 112 Cal. 208. Although severely criticized by Mr. Sedgwick in his work on Damages, it has the advantage of affording the complainant a just and equitable relief without either giving him the opportunity to speculate upon his damages upon one hand, or on the other, of imposing a harsh and excessive punishment upon the debtor. *Sedgwick, Damages,* sec. 508, *et seq.* Where the stock has not advanced, under the prevailing rule, the complainant can obtain only nominal damages. *Taussig v. Hart,* 58 N. Y. 425.

It is interesting to note that the Connecticut court held it necessary to plead as special damage the fact that the stock had risen in value between the time of conversion and the time when it might have been replaced, and would not allow proof of that fact to be admitted under the general claim for damages.

DISCRIMINATION IN THE TAXATION OF STATE AND NATIONAL BANKS.

The question has several times arisen of what constitutes discrimination in the taxation of state and national banks, under *U. S. Rev. St.,* Sec. 5219, which exempts all the property of national banks, not including real estate within the taxing state; but provides for the taxation of the stock of such banking corporations, further providing that the stock shall not be taxed at a greater rate

than other moneyed capital in the hands of the individual citizens of the state.

It may be laid down as an established rule that the mere fact that different systems of taxation are applied to state and to national banks does not of itself constitute discrimination under the statute, *Nevada Nat. Bank v. Dodge,* 119 Fed. 57; *Davenport Nat. Bank v. Board of Equalization,* 123 U. S. 83. All that the statute requires is that the national banks be not unjustly discriminated against; they need not be taxed in the same manner. *Davenport Nat. Bank v. Board of Equalization, supra.* It has also been held that a statute imposing taxes on bank shares and requiring the assessment of such shares to be made at their market value, without making any deduction on account of the real estate owned by the bank, is not discriminative. *Peo. Nat. Bank v. Marye,* 107 Fed. 570. This case further holds that the statutes of a state permitting a taxpayer to deduct the amount of his indebtedness from the amount of all bonds, notes and other evidences of debt which he is required to return for taxation does not render the assessment of national bank shares at their market value, without allowing the holder to deduct his indebtedness, an unlawful discrimination against such shares, and in favor of other moneyed capital.

Another phrase of the question has lately been passed upon in *San Francisco Nat. Bank v. Dodge,* 25 Sup. Ct. 384, where the discrimination grew out of the method of assessing the property. The statutes of California require that all taxable property shall be assessed "at its full cash value" and that the terms "value" and "full cash value" shall be construed to mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor. This, it was maintained, required the assessment of stock at its market value. It was also claimed that market value was made up of all the property of the banks including franchises, the prospective earning capacity, and the skill of the officers in the management of the company; that an arbitrary reduction in valuation by the assessor constituted a discrimination, as in *Bank of Cal. v. San Francisco,* 142 Cal. 276, where under statutory provisions the franchise was to be valued by deducting the value of the tangible property from the market value of the shares of stock. The discrimination, it was urged, lay in a resulting failure to include prospective earning capacity and the skill of the officers. The court in the principal case was of the opinion that such reduction was discrimination within the meaning of the federal statute, as the taxing of the shares of stock of the national banks at market value included the entire difference between the value of the tangible property and the selling price of the stock, as well as the actual value of all tangible property.

The strong dissenting opinion rendered by Justice Brewer and concurred in by three other justices seems to be more in harmony with the liberal construction shown by the cases first cited. It maintains that the value of the stock depends upon that of the property, that if a fair valuation were placed upon the latter—which was not denied in this case—there was no violation of the federal

statute, and that the court could not inquire into the method of reasoning by which the assessor had reached the value of the franchise, it being admitted to have been done in good faith. *Pol. Code of Cal.,* Sec. 3608, it may be remarked, declares that shares of stock have no intrinsic value over and above the actual value of the property of the corporation, which they represent.

THE RIGHT OF PRIVACY.

A question of law comparatively new in the American courts, and one wholly unsettled, is that involving what has been termed the right of privacy, the right to be let alone. The sentiment in favor of this right had its first substantial expression in 1890, during which year there appeared in Scribner's Magazine for July an article entitled "The Rights of the Citizen to his Reputation", by E. L. Godkin, Esq., an extended discussion on the "Right to Privacy" in IV *Harv. L. R.* 193, and the case of *Manola v. Stevens* (not reported) in which the Supreme Court of New York enjoined the defendant from making and issuing photographs surreptitiously taken of the plaintiff. In *Schuyler v. Curtis,* 15 N. Y. Supp. 787 (1891), the relatives of Mrs. George Schuyler, the deceased, secured an injunction restraining the defendant from proceeding with a project to make and exhibit a statue of the deceased, the court holding that the granting of an injunction is not limited to a case where damages could be recovered at law. In 1895 this case came before the New York Court of Appeals and the judgment was reversed on the ground no right of privacy survives so that it can be enforced by relatives. 147 N. Y. 434. In a case arising in Michigan where a widow brought an action to restrain the defendant manufacturer from using the name and picture of her deceased husband on cigar labels, the court held that this was an injury which the law could not redress. *Atkinson v. Doherty,* 121 Mich. 373. So in the United States Circuit Court in a suit brought by the widow and children of George H. Corliss to enjoin the defendant publishers from printing and selling the picture of Mr. Corliss, it was held that the jurisdiction of equity to grant injunctions, being founded on rights of property, did not extend to a matter affecting an exclusively personal right. *Corliss v. Walker,* 64 Fed. 280.

It may be noted that in none of these cases was the action brought by the person whose right of privacy had been invaded, but in the case of *Roberson v. Folding Box Co.,* 71 N. Y. Supp. 876 (1901) the action was brought by the person injured and the question was squarely presented to the court for decision. In this case it appeared that lithographed likenesses of a young woman, bearing the words "Flour of the Family," were, without her consent, printed and used by a flour milling company to advertise its goods. The court gave judgment for the plaintiff, holding that if a property right was necessary to entitle the plaintiff to maintain the action, the case might stand upon the right of property which every one has in his own body. This case was carried to the Court of Appeals in 1902 and the judgment was reversed. 171 N. Y. 540. The decision was rendered by a divided court, Judge Gray, with